

REMARKS/ARGUMENTS

Reconsideration of the above-identified patent application is respectfully requested in view of the foregoing amendments and following remarks. Claims 27 and 36 have been amended. Claims 27, 31 - 33, and 35 - 38 remain in the case.

Claims 27, 31 - 33, and 35-38 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of United States Patent No. 5,487,067 for AUDIO DATA COMMUNICATION, issued January 23, 1996 to Takashi Matsushige, et al. This patent discloses data communications apparatus comprising a master device for processing digital audio data and a plurality of slave devices connectable in a ring network with the master device. Each slave device has a plurality of data channels associated therewith and is arranged for supply, in use, of audio data from the ring network to its associated data channels and/or to the ring network from its associated data channels. The master and slave devices are arranged for serial communication via the ring network in use of digital audio data formatted in frames, each frame comprising a plurality of data blocks which data blocks contain audio sample data corresponding to respective audio signals.

Regarding claim 27, Examiner Mei references "a plurality of typical audio/video studio... that includes different rooms..." as found in Figs. 13-17. What is overlooked is the trend in the sound industry, when MATSUSHIGE was filed, to compartmentalize equipment (such as mixers, tape decks, and so on), control consoles, and performance areas into separate, yet adjacent, rooms. Therefore, the interpretation of the term 'plurality' that Examiner Mei attributes to MATSUSHIGE is respectfully inaccurate.

In the context of claim 27, MATSUSHIGE diagrams a set-up of electrically connected studios, each comprising the requisite machine, sound, and control rooms for multiple studios. MATSUSHIGE delineates room plurality in terms of the connectivity found within master- and slave-device control. That is, the MATSUSHIGE ring network encompasses

the devices (tape recorders, mixers, and so on) of several studios, with the express purpose of standardizing the control of audio data between said studios. As Examiner Mei noted, MATSUSHIGE does not describe acoustically identical audio spaces simply because it is not necessary. Accordingly, there is no motivation in MATSUSHIGE to provide Applicant's acoustically identical enclosures. MATSUSHIGE states that, "Each slave mixer can process data received from its studio network and transmit processed data to the master mixer via the mixer network. Similarly, data from the master mixer can be communicated to a device in a studio network by way of the appropriate slave mixer." (Col. 25, lines 36-41) Therefore, MATSUSHIGE utilizes multiple studios (Fig. 17) for the explicit purpose of demonstrating such master- and slave-device connectivity and the potential for data transmission and control between them.

Moreover, although MATSUSHIGE discloses a plurality of devices, he does not disclose a plurality of substantially identical devices, as recited in Applicant's presently amended claims. Ring network connectivity may be achieved through the use of multiple and variable devices, such as tape recorders, multi-track recorders, and so on. MATSUSHIGE's emphasis is placed on successful connection between said devices, rather than on the substantial physical equivalence of said devices. Applicant, however, specifically requires that the every facility be "...built to exact standards and specifications—physically, acoustically, and technologically." (Pg. 10, lines 6-8) and that the consoles in all audio enclosures be "identically configured." (Pg. 22, lines 13-14) These limitations are now recited in all currently amended claims.

Although the function of MATSUSHIGE may parallel to Applicant's function, functionality is not at issue. MATSUSHIGE does not expressly state that either substantially identical studios or substantially identical devices are paramount to the functioning of ring network connectivity. Opposing this omission, Applicant unequivocally and affirmatively iterates the importance of said space and mixing console.

As stated in *Hewlett-Packard Co. v. Bausch & Lomb, Inc.* (909 F.2d 1464, 1469; 15 USPQ2d 1525, 1528, United States Court of Appeals, Federal Circuit, 1990), the court

ruled that, "...there is no requirement... (to) show 'operational differences' of the claimed device over the prior art. ...Apparatus claims cover what a device is, not what a device does. An invention need not operate differently than the prior art to be patentable, but need only be different." [emphasis in original] Furthermore, patent claims drawn to an apparatus must distinguish from the prior art in terms of structure rather than function. (*In Re Danly* 263 F.2d 844, 847, United States Court of Customs and Patent Appeals, 1959) In light of these rulings, the aforementioned differences between Applicant's and MATSUSHIGE's respective inventions distinguish them. This lack of correlation between Applicant and MATSUSHIGE respectfully leads to the conclusion that Applicant's invention is not obvious.

Furthermore, the obviousness of extending MATSUSHIGE to the realms of both substantially identical audio spaces **and** synchronization of audio events with other events could not have been foreseen by one with ordinary skill in the art at the time the invention was made. The reasons for this are two-fold. First, MATSUSHIGE does not teach that substantially identical audio spaces are necessary or even beneficial. What is of paramount importance is proper ring networking of master- and slave-devices to ensure proficient data transmission. The physical and acoustical similarities between a plurality of audio spaces is unnecessary. Secondly, MATSUSHIGE was intended to bypass the costly and inefficient point-to-point interface of prior audio connectivity. Synchronization is not at issue; efficiency of audio data transfer is. Overall, it must be maintained that, 'In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.' (MPEP §2141.02)

With respect to claim 32, Examiner Mei stated that MATSUSHIGE, "...discloses the data transfer via the Ethernet," which renders Applicant's claim unallowable. In fact, MATSUSHIGE teaches away from the use of the Ethernet, stating, "...The required data transfer rate cannot be achieved using the Ethernet transfer format..." [emphasis added] (Col. 26 lines 52-53)

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Because the prior art of record fails to disclose or suggest Applicant's system, Applicant respectfully traverses the rejection of claims 27 and 36 under 35 U.S.C. §103(a) as being unpatentable over MATSUSHIGE. Claims 31-33 and 35 depend from claim 27 while claims 37-38 depend from claim 36 and merely recite additional limitations thereto. Consequently, their rejection under 35 U.S.C. §103(a) is also respectfully traversed.

In view of the foregoing remarks, Applicant respectfully requests that claims 27, 31 - 33, and 35 - 38 be allowed and a timely Notice of Allowance be issued in this case.

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